

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

PREMIER FABRICS, INC., a New York
Corporation,

Plaintiff,

vs.

JESSICA MCCLINTOCK, INC., a
California Corporation; MACY'S, INC.,
a Delaware Corporation; MACY'S
RETAIL HOLDINGS, INC., a Delaware
Corporation; and DOES 1 through 10,

Defendants.

CASE NO. CV12-5982 CAS (FFMx)

~~[PROPOSED]~~ STIPULATED
PROTECTIVE ORDER

**NOTE CHANGES MADE BY
COURT**

Complaint: July 11, 2012
Trial Date: September 17, 2013

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this matter would be warranted. Accordingly, the parties hereby stipulate to and petition this Court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords extends only to the limited information or items that are entitled under the applicable legal principles to treatment as confidential. The parties have agreed that

1 the terms of this Protective Order shall also apply to any future voluntary
 2 disclosures of confidential, proprietary or private information. The parties reserve
 3 their rights to object to or withhold any information including confidential,
 4 proprietary or private information on any other applicable grounds permitted by
 5 law, including third party rights and relevancy.

6 2. DEFINITIONS

7 2.1 Party: any party to this action, including all of its officers,
 8 directors, employees, consultants, retained experts, and outside counsel (and their
 9 support staff).

10 2.2 Disclosure or Discovery Material: all items or information,
 11 regardless of the medium or manner generated, stored, or maintained (including,
 12 among other things, testimony, transcripts, or tangible things) that are produced or
 13 generated in disclosures or responses to discovery in this matter, including
 14 documents produced by Defendants for the purpose of settlement discussions prior
 15 to **the (FFM)** time that this Stipulated Protective Order was entered into.

16 2.3 "Confidential" Information or Items: information (regardless of
 17 how generated, stored or maintained) or tangible things that qualify for protection
 18 under standards developed under F.R.Civ.P. 26(c).

19 2.4 "Attorney's Eyes Only": Discovery Material or such portion of
 20 such material as consists of:

21 a) any commercially sensitive and/ or confidential business or
 22 financial information (including without limitation confidential nonpublic contracts,
 23 profitability reports or estimates, sales reports, and sales margins);

24 b) any business or financial information that is confidential,
 25 proprietary, or commercially sensitive to third parties who have had business
 26 dealings with parties to this action; or

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1 c) any other category of material or information hereinafter
2 given Confidential status by the Court.

3 2.5 Receiving Party: a Party that receives Disclosure or Discovery
4 Material from a Producing Party.

5 2.6 Producing Party: a Party or non-party that produces Disclosure
6 or Discovery Material in this action.

7 2.7 Designating Party: a Party or non-party that designates
8 information or items that it produces in disclosures or in responses to discovery,
9 including the documents produced by Defendants for the purpose of settlement
10 discussions prior to the time that this Stipulated Protective Order was entered into,
11 as "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY."

12 2.8 Protected Material: any Disclosure or Discovery Material that is
13 designated as "CONFIDENTIAL" or as "ATTORNEY'S EYES ONLY."

14 2.9 Expert: a person with specialized knowledge or experience in a
15 matter pertinent to the litigation who has been retained by a Party or its counsel to
16 serve as an expert witness or as a consultant in this action. This definition includes
17 a professional jury or trial consultant retained in connection with this litigation. The
18 expert witness or consultant may not be a past or a current employee of the Party
19 (including any affiliates or related entities) adverse to the Party engaging the expert
20 witness or consultant, or someone who at the time of retention is anticipated to
21 become an employee of the Party (including any affiliates or related entities)
22 adverse to the Party engaging the expert witness or consultant. Moreover, the
23 expert witness or consultant may not be a current employee or anticipated to
24 become an employee of any entity who is a competitor of the Party adverse to the
25 Party engaging the expert witness or consultant.

26 2.9 Professional Vendors: persons or entities that provide litigation
27 support services (e.g., photocopying; videotaping; translating; preparing exhibits or
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1 demonstrations; organizing, storing, retrieving data in any form or medium; etc.)
2 and their employees and subcontractors.

3 3. SCOPE

4 The protections conferred by this Stipulation and Order cover not only
5 Protected Material (as defined above), but also any information copied or extracted
6 therefrom, as well as all copies, excerpts, summaries, or compilations thereof, plus
7 testimony, conversations, or presentations by parties or counsel to or in arbitration
8 or in other settings that might reveal Protected Material, **other than at any public**
9 **trial or hearing herein. (FFM)**

10 4. DURATION

11 Even after the termination of this arbitration, the confidentiality obligations
12 imposed by this Order shall remain in effect until a Designating Party agrees
13 otherwise in writing or a court order otherwise directs.

14 5. DESIGNATING PROTECTED MATERIAL

15 5.1 Exercise of Restraint and Care in Designating Material for
16 Protection. Each Party or non-party that designates information or items for
17 protection under this Order must take care to limit any such designation to specific
18 material that qualifies under the appropriate standards. A Designating Party must
19 take care to designate for protection only those parts of material, documents, items,
20 or oral or written communications that qualify – so that other portions of the
21 material, documents, items, or communications for which protection is not
22 warranted are not swept unjustifiably within the ambit of this Order.

23 Mass, indiscriminate, or routinized designations are prohibited. Designations
24 that are shown to be clearly unjustified, or that have been made for an improper
25 purpose (e.g., to unnecessarily encumber or retard the case development process, or
26 to impose unnecessary expenses and burdens on other parties), expose the
27 Designating Party to sanctions.

1 If it comes to a Party's or a non-party's attention that information or items
 2 that it designated for protection do not qualify for protection at all, or do not qualify
 3 for the level of protection initially asserted, that Party or non-party must promptly
 4 notify all other parties that it is withdrawing the mistaken designation.

5 5.2 Manner and Timing of Designations. Except as otherwise
 6 provided
 7 in this Order (see, e.g., second paragraph of section 5.2(a), below), or as otherwise
 8 stipulated or ordered, material that qualifies for protection under this Order must be
 9 clearly so designated before the material is disclosed or produced.

10 Designation in conformity with this Order requires:

11 (a) for information in documentary form (apart from
 12 transcripts of depositions or other pretrial or trial proceedings), that the Producing
 13 Party affix the legend "CONFIDENTIAL" or "ATTORNEY'S EYES ONLY" at
 14 the top or bottom of each page that contains protected material.

15 A Party or non-party that makes originals or copies of
 16 documents or materials available for inspection need not designate them for
 17 protection until after the inspecting Party has indicated which material it intends to
 18 copy. During the inspection and before the designation, all of the material made
 19 available for inspection shall be deemed "ATTORNEY'S EYES ONLY". After the
 20 inspecting Party has identified the documents it wants copied and produced, the
 21 Producing Party must designate, either in writing or on the record (at a deposition),
 22 which documents, or portions thereof, qualify for protection under this Order, then
 23 the Receiving Party must affix the "CONFIDENTIAL" or "ATTORNEY'S EYES
 24 ONLY" legend at the top of each copied page that contains Protected Material. If
 25 only a portion or portions of the material on a page qualifies for protection, the
 26 Producing Party also must clearly identify the protected portion(s) (e.g., by making
 27 appropriate markings in the margins) and must specify, for each portion, the level of

1 protection being asserted (either “CONFIDENTIAL” or “ATTORNEY’S EYES
2 ONLY”).

3 (b) for testimony given in deposition ~~or in other pretrial or~~
4 ~~trial proceedings~~, that the Party or non-party offering or sponsoring the testimony
5 identify on the record, before the close of the deposition, ~~hearing, or other~~
6 ~~proceeding~~, all protected testimony, and further specify any portions of the
7 testimony that qualify as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY.”
8 When it is impractical to identify separately each portion of testimony that is
9 entitled to protection, and when it appears that substantial portions of the testimony
10 may qualify for protection, the Party or non-party that sponsors, offers, or gives the
11 testimony may invoke on the record (before the deposition ~~or proceeding~~ is
12 concluded) a right to have up to 20 days to identify the specific portions of the
13 testimony as to which protection is sought and to specify the level of protection
14 being asserted (“CONFIDENTIAL” or “ATTORNEY’S EYES ONLY”). Only
15 those portions of the testimony that are appropriately designated for protection
16 within the 20 days shall be covered by the provisions of this Stipulated Protective
17 Order. **(FFM)**

18 Transcript pages containing Protected Material must be
19 separately bound by the court reporter, who must affix to the top of each such page
20 the legend “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY,” as instructed by
21 the Party or nonparty offering or sponsoring the witness or presenting the
22 testimony.

23 (c) for information produced in some form other than
24 documentary, and for any other tangible items, that the Producing Party affix in a
25 prominent place on the exterior of the container or containers in which the
26 information or item is stored the legend “CONFIDENTIAL” or “ATTORNEY’S
27 EYES ONLY.” If only portions of the information or item warrant protection, the
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Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “CONFIDENTIAL” or as “ATTORNEY’S EYES ONLY.”

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. If material is appropriately designated as “CONFIDENTIAL” or “ATTORNEY’S EYES ONLY” after the material was initially produced, the Receiving Party, on timely notification of the designation, must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary economic burdens, or a later significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. A Party that elects to initiate a challenge to a Designating Party’s confidentiality designation must do so in good faith and must begin the process by conferring with counsel for the Designating Party in writing. In conferring, the challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen

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1 designation. A challenging Party may proceed to the next stage of the challenge
2 process only if it has engaged in this meet and confer process first.

3 6.3 Court Intervention. A Party that elects to press a challenge to a
4 confidentiality designation after considering the justification offered by the
5 Designating Party may file and serve a motion that identifies the challenged
6 material and sets forth in detail the basis for the challenge. Each such motion must
7 be accompanied by a **joint stipulation pursuant to Local Rule 37 and a (FFM)**
8 competent declaration that affirms that the movant has complied with the meet and
9 confer requirements imposed in the preceding paragraph and that sets forth with
10 specificity the justification for the confidentiality designation that was given by the
11 Designating Party in the meet and confer dialogue. The parties agree that a
12 confidentiality designation shall not create a presumption in favor of such
13 confidentiality designation, and that the Court shall decide the issue as such.

14 Until the arbitrator rules on the challenge, all parties shall continue to
15 afford the material in question the level of protection to which it is entitled under
16 the Producing Party's designation.

17 7. ACCESS TO AND USE OF PROTECTED MATERIAL

18 7.1 Basic Principles. A Receiving Party may use Protected Material
19 that is disclosed or produced by another Party or by a non-party in connection with
20 this case only for prosecuting, defending, or attempting to settle this litigation. Such
21 Protected Material may be disclosed only to the categories of persons and under the
22 conditions described in this Order. When the litigation has been terminated, a
23 Receiving Party must comply with the provisions of section 11, below (FINAL
24 DISPOSITION).

25 Protected Material must be stored and maintained by a Receiving Party
26 at a location and in a secure manner that ensures that access is limited to the persons
27 authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the arbitrator or permitted in writing by the Designating Party,
3 a Receiving Party may disclose any information or item designated
4 “CONFIDENTIAL” only to:

5 (a) the Receiving Party’s outside counsel and in-house
6 counsel, as well as paralegals and/or employees of said outside counsel or in-house
7 counsel to whom it is reasonably necessary to disclose the information
8 for this litigation;

9 (b) Board members, officers and directors of the Receiving
10 Party;

11 (c) Other employees of the Receiving Party to whom
12 disclosure is reasonably necessary for this litigation and who are bound by internal
13 confidentiality obligations as part of their employment or who have signed the
14 “Agreement to Be Bound by Protective Order” (Exhibit A);

15 (d) Experts (as defined in this Order) of the Receiving Party
16 to whom disclosure is reasonably necessary for this litigation and who have signed
17 the “Agreement to Be Bound by Protective Order” (Exhibit A);

18 (e) the Court personnel assigned to this litigation;

19 (f) court reporters, their staffs, and professional vendors to
20 whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Agreement to Be Bound by Protective Order” (Exhibit A);

22 (g) during their depositions, witnesses in the action to whom
23 disclosure is reasonably necessary and who have signed the “Agreement to Be
24 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition testimony
25 or exhibits to depositions that reveal Protected Material must be separately bound
26 by the court reporter and may not be disclosed to anyone except as permitted under
27 this Stipulated Protective Order; and

(h) the author and recipients of the document or the original source of the information.

7.3 Disclosure of “ATTORNEY’S EYES ONLY” Information or Items. Unless otherwise ordered by the arbitrator or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “ATTORNEY’S EYES ONLY” only to:

(a) the Receiving Party’s Outside Counsel, as well as employees of said Outside Counsel to whom it is reasonably necessary to disclose the information for this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A);

(c) the Court personnel assigned to this litigation;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Agreement to Be Bound by Protective Order” (Exhibit A); and

(e) the author and recipients of the document or the original source of the information.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any Discovery Material, the Receiving Party must so notify the Designating Party, in writing immediately and in no event more than five business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party also must immediately inform in writing the Party who caused the subpoena or order to issue in the other litigation that some or all the material covered by the

1 subpoena or order is the subject of this Protective Order. In addition, the Receiving
 2 Party must deliver a copy of this Stipulated Protective Order promptly to the Party
 3 in the other action that caused the subpoena or order to issue.

4 The purpose of imposing these duties is to alert the interested parties to
 5 the existence of this Protective Order and to afford the Designating Party in this
 6 case an opportunity to try to protect its confidentiality interests in the court from
 7 which the subpoena or order issued. The Designating Party shall bear the burdens
 8 and the expenses of seeking protection in that court of its confidential material –
 9 and nothing in these provisions should be construed as authorizing or encouraging a
 10 Receiving Party in this action to disobey a lawful directive from another court.

11 9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

12 If a Receiving Party learns that, by inadvertence or otherwise, it has
 13 disclosed Protected Material to any person or in any circumstance not authorized
 14 under this Stipulated Protective Order, the Receiving Party must immediately (a)
 15 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
 16 best efforts to retrieve all copies of the Protected Material, (c) inform the person or
 17 persons to whom unauthorized disclosures were made of all the terms of this Order,
 18 and (d) request such person or persons to execute the “Acknowledgment and
 19 Agreement to Be Bound” that is attached hereto as Exhibit A.

20 10. FILING PROTECTED MATERIAL. If any Protected Material is
 21 included with any papers filed with the court, the filing party shall ~~file~~ **lodge (FFM)**
 22 such Protected Material **along with an application to file such material (FFM)**
 23 under seal in the manner set forth in California Central District Local Rule 79-5.1 or
 24 other similar Court rules that may be controlling at the time of the filing of the
 25 Protected Material.

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11. FINAL DISPOSITION. Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days after the final termination of this action, each Receiving Party must return all Protected Material to the Producing Party. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries or any other form of reproducing or capturing any of the Protected Material. With permission in writing from the Designating Party, the Receiving Party may destroy some or all of the Protected Material instead of returning it. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day deadline that identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or other forms of reproducing or capturing any of the Protected Material.

Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION), above.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any

1 ground to use in evidence of any of the material covered by this Protective Order.

2 12.3 Inadvertent Production of Privileged Documents. If a Party,
3 through inadvertence, produces any document or information that it believes is
4 immune from discovery pursuant to an attorney-client privilege, the work product
5 privilege, or any other privilege, such production shall not be deemed a waiver of
6 any privilege, and the Producing Party may give written notice to the Receiving
7 Party that the document or information produced is deemed privileged and that
8 return of the document or information is requested. Upon receipt of such notice, the
9 Receiving Party shall immediately gather the original and all copies of the
10 document or information of which the Receiving Party is aware, in addition to any
11 abstracts, summaries, or descriptions thereof, and shall immediately return the
12 original and all such copies to the Producing Party. Nothing stated herein shall
13 preclude a Party from challenging an assertion by the other Party of privilege or
14 confidentiality.

15 PURSUANT TO STIPULATION, IT IS SO ORDERED.

16
17 Dated: November 14, 2012

By: /S/ FREDERICK F. MUMM
Honorable Frederick F. Mumm
United States Magistrate Judge

EXHIBIT A**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, _____ [print full name],
 of _____ [print full address],
 declare under penalty of perjury that I have read in its entirety and understand the
 Stipulated Protective Order that was issued by the United States District Court for
 the Central District of California in the case of *Premier Fabrics, Inc. v. Jessica
 McClintock, Inc., et al.*, Case No. CV12-5982 (PLA). I agree to comply with and to
 be bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action.

I hereby appoint _____ [print full name] of
 _____ [print full address and telephone number]
 as my California agent for service of process in connection with this action or any
 proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____